

**DEPARTMENT OF STATE REVENUE**  
**LETTER OF FINDINGS NUMBER: 02-0364**  
**Cigarette Tax**  
**For Tax Period 1998-2000**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**I. Cigarette Tax--Imposition**

**Authority:** IC 6-7-1-1; IC 6-8.1-5-1; 45 IAC 8.1-1-28

Taxpayer protests the imposition of cigarette tax on cigarettes reportedly exported from Indiana.

**STATEMENT OF FACTS**

Taxpayer is in the business of distributing tobacco products and other products in Indiana and several other states. The Indiana Department of Revenue ("Department") determined that the cigarettes in question never left Indiana based on taxpayer's records reported to the governments of the states in question, and therefore assessed cigarette tax on those cigarettes which had not been previously paid. Taxpayer protests the imposition of additional cigarette tax. Further facts will be provided as necessary.

**I. Cigarette Tax--Imposition**

**DISCUSSION**

Taxpayer protests the imposition of additional cigarette tax for the tax years in question. The Department reviewed taxpayer's Indiana returns as well as taxpayer's returns to Kentucky and Illinois and Missouri. As a result, the Department noted discrepancies between the amount taxpayer reported shipped into Kentucky and Illinois from Indiana and the amount reported on taxpayer's Indiana returns shipped from Indiana into those states.

The cigarette tax is established in IC 6-7-1-1, which states:

It is the intent and purpose of this chapter to levy a tax on all cigarettes sold, used, consumed, handled, or distributed within this state, and to collect the tax from the person who first sells, uses, consumes, handles, or distributes the cigarettes. It is further the intent and purpose of this chapter that whenever any cigarettes are given for advertising or any purpose whatsoever, they shall be taxed in the same

manner as if they were sold, used, consumed, handled, or distributed in this state. Notwithstanding any other provisions contained in this chapter, the liability for the excise taxes imposed by this chapter shall be conclusively presumed to be on the retail purchaser or ultimate consumer, precollected for convenience and facility only. When such taxes are paid by any other person, such payment shall be considered as an advance payment and shall be added to the price of the cigarettes and recovered from the ultimate consumer or user. Distributors, wholesalers, or retailers may state the amount of the tax separately from the price of such cigarettes on all price display signs, sales or delivery slips, bills, and statements which advertises or indicate the price of such cigarettes.

Also of relevance is 45 IAC 8.1-1-28, which states:

The tax imposed by the Act [IC 6-7-1] upon distributors of cigarettes within this State does not apply to cigarettes which are shipped from within this State to a point, outside the State, not to be returned to this State. Distributors need not affix tax stamps to the individual packages of cigarettes that are sold and shipped outside the State. The burden of proof, however, is at all times upon the Indiana distributor to show that such cigarettes actually went into interstate commerce.

The Department reviewed taxpayer's Indiana returns for the years in question, then reviewed taxpayer's returns for Kentucky, Illinois and Missouri for the same years. The Department determined that taxpayer had reported a certain number of cigarettes as shipped from its Indiana point of origin to Kentucky, Illinois and Missouri destinations. As explained in 45 IAC 8.1-1-28, such cigarettes are not taxed in Indiana.

The Department also determined that taxpayer reported fewer cigarettes shipped to the Kentucky and Illinois destinations than it reported shipped from the Indiana point of origin. As a result of fewer cigarettes reported as shipped into those states, taxpayer paid fewer cigarette taxes to those states. The Department determined that, since the number of cigarettes shipped from Indiana to Kentucky and Illinois did not match the number of cigarettes shipped into Kentucky and Illinois from Indiana, the cigarettes were never shipped out of Indiana and were therefore subject to Indiana's cigarette tax.

Taxpayer states that there is no requirement that a taxpayer pay taxes on cigarettes in another state in order to meet the requirements of 45 IAC 8.1-1-28. Taxpayer believes that the only requirement is that it provide proof of interstate shipping of the cigarettes. Therefore, taxpayer believes, it has satisfied the requirements of 45 IAC 8.1-1-28 by reporting the cigarettes as interstate shipping. Taxpayer states that the Department is mistaken in requiring cigarette taxes to actually be paid in another state.

Taxpayer misunderstands the Department's method. Taxpayer reported a number of cigarettes as shipped to Kentucky, Illinois and Missouri. No cigarette tax was paid on those cigarettes. Taxpayer reported a smaller number of cigarettes arriving in Kentucky and Illinois. The Department determined that the original number reported by taxpayer was incorrect and the number reported to Kentucky and Illinois were correct. That left a number of cigarettes which,

while originally reported as shipped out of Indiana, in fact never left Indiana and never had cigarette taxes paid on them. These are the cigarettes upon which the Department has imposed cigarette taxes.

The Department did not base its determination on whether or not taxes were paid in another state. The Department based its determination on whether or not the cigarettes left Indiana. As for taxes paid or not paid to other states, if cigarettes never leave Indiana, it stands to reason that taxes will not be paid to other states.

The Department refers to the last sentence of 45 IAC 8.1-1-28, which states:

The burden of proof, however, is at all times upon the Indiana distributor to show that such cigarettes actually went into interstate commerce.

The Department also refers to IC 6-8.1-5-1(b), which states in relevant part:

The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made.

Taxpayer sent in documentation to support its protest that the cigarettes were shipped interstate to Kentucky and Illinois. As previously explained, the Department based its determination on the reports taxpayer made on its Kentucky and Illinois tax returns, which state that the cigarettes in question did not go into interstate commerce. The documentation taxpayer submitted does not meet the burden of proving that the cigarettes actually went into interstate commerce, as required by 45 IAC 8.1-1-28. Neither does it meet the burden of proving the proposed assessment wrong, as required by IC 6-8.1-5-1(b).

### **FINDING**

Taxpayer's protest is denied.